

U.S. Patent Application Serial No. **09/893,522**
Amendment filed May 14, 2007
Reply to OA dated February 13, 2007

REMARKS:

Claims 1-6 and 35-48 are currently pending. Claims 1-4 and 35-48 are currently being considered. Claims 5 and 6 have been withdrawn from consideration. No claims have been amended herein.

A. The Examiner has rejected claims 1 and 35/1 under 35 USC 102(b) as anticipated by USP 6,076,543 (Johnson).

Applicants respectfully traverse this rejection, for the following reasons.

(1) The Examiner has introduced new steps relating to taking the **Johnson** apparatus to a railroad track. However, **Johnson** does not expressly or inherently describe or support the Examiner's new steps of (i) taking the **Johnson** apparatus to a railroad track and (ii) sliding the **Johnson** apparatus on a railroad track.

(2) The Examiner has not acted in accordance with the guidelines of the U.S. Patent and Trademark Office, since the Examiner appears to rely on "official notice" or to rely on something

that may or may not be "based upon common knowledge." The Examiner has not properly taken official notice regarding moving the **Johnson** apparatus to a railroad track. The Examiner has improperly asserted that the **Johnson** disclosure, in combination with the Examiner's new steps of taking a **Johnson** line out to a railroad track and sliding the **Johnson** line on the railroad track, anticipates the features set forth in claim 1 of the subject application. This rejection is flawed and should be withdrawn, because the Examiner has improperly taken official notice regarding a claimed feature (the "at least one orthogonal rail"), and because the Examiner has made an assertion not properly based upon common knowledge. **Johnson** does not expressly or inherently describe sliding a **Johnson** line on a railroad track.

(3) If the Examiner were to withdraw this 35 USC 102 rejection, and issue a new rejection of claims 1 and 35/1 under 35 USC 103(a) as obvious over USP 6,076,543 (**Johnson**), in an attempt to show possible obviousness, that new rejection would be improper for the following reasons. The Examiner has not shown that **Johnson** describes, teaches, or suggests (i) taking the **Johnson** apparatus to a railroad track and (ii) sliding the **Johnson** apparatus on a railroad track. Also, the Examiner has not demonstrated that **Johnson** describes, teaches, or suggests the combination of features as set forth in claim 1 of the subject application.

(4) The Examiner has not demonstrated that **Johnson** expressly or inherently describes the following features set forth in claim 1: "the fluid control device being characterized in that the base member has at least one orthogonal rail extending in a direction orthogonal to the line and each line is mounted on a line supporting rail, the line supporting rail being mounted on the base member and slidable in a direction orthogonal to the line along the at least one orthogonal rail" (claim 1, lines 6-10). A railroad track does not expressly or inherently describe the "at least one orthogonal rail" as set forth in claim 1.

(5) The rejection of claim 1 is improper because **Johnson** fails to expressly or inherently describe the "line supporting rail being ... slidable in a direction orthogonal to the line along the at least one orthogonal rail," as set forth in claim 1. **Johnson** indicates that the "gas handling device is adjustably mounted on a pair of rails or supports that are coupled between adjacent stanchions 116. Each rail extends transverse to the long axis of device's track and includes a mount or bolt which extends therefrom for insertion through a respective one of track 42's slots 71" (col. 12, lines 24-29). The Examiner appears to allege that the phrase "adjustably mounted" (col. 12, line 25) is the equivalent of this claim language: "mounted ... and slidable" (claim 1, line 9). However, **Johnson** does not expressly or inherently describe the "line supporting rail being mounted ... and slidable in a direction orthogonal to the line along the at least one orthogonal rail," as set forth in claim 1. The phrase "adjustably mounted" does not expressly or inherently describe "mounted ... and slidable," as set forth in claim 1 (lines 9-10). "Adjustable" does not expressly or inherently describe "slidable."

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Accordingly, in view of the above, Applicants respectfully submit that this rejection of claim 1 should be withdrawn.

It is submitted that this rejection of claim 35/1 should be withdrawn by virtue of its dependency.

B. The Examiner has rejected claims 1-4, 35, 37-42, and 44-48 under 35 USC 103(a) as obvious over **Johnson** in view of USP 6,152,175 (**Itoh**).

Applicants respectfully traverse this rejection, for the following reasons.

The rejection of claim 1 under 35 USC 103(a) is improper because **Johnson** and **Itoh**, alone or in combination, fail to describe, teach, or suggest the following features set forth in claim 1: “line supporting rail being mounted ... and slidable in a direction orthogonal to the line along the at least one orthogonal rail,” in combination with the other claimed features.

The rejection of claim 2 under 35 USC 103(a) is improper because **Johnson** and **Itoh**, alone or in combination, fail to describe, teach, or suggest the following features set forth in claim 2: “the line supporting member being mounted ... and slidable in a direction orthogonal to the line,” in combination with the other claimed features.

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The rejection of claims 3 and 4 under 35 USC 103(a) is improper because **Johnson** and **Itoh**, alone or in combination, fail to describe, teach, or suggest the following features set forth in claims 3 and 4, as amended: “the tracks being slidable in a direction orthogonal to the lines,” in combination with the other claimed features.

The Examiner has not demonstrated a reasonable motivation to combine **Johnson** and **Itoh**. The Examiner identified “reduced costs” as a motivation, but has not yet demonstrated that costs would be reduced when replacing **Johnson’s** tubing with **Itoh’s** base plate 21. In fact, base plate 21 looks like it may be a more costly component than the tubing of **Johnson**. Thus, such a combination may result in increased costs. The Examiner suggests that an increased yield of a production run necessarily reduces costs. However, if the production run utilizes components that are more expensive, then an “increased yield” may lead to increased costs and not reduced costs.

The Examiner indicates that the arguments in the Response filed on January 17, 2007 are repetitive and have been answered in previous actions. However, Applicants respectfully disagree with the Examiner. Furthermore, the Examiner has not yet persuasively established that there is motivation to combine **Johnson** and **Itoh** to arrive at the features set forth in claims of the subject application.

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Additionally, regarding **claim 37**, the Examiner has not demonstrated that the cited references describe, teach, or suggest the following features set forth in claim 37: “wherein a plurality of lines comprise a spare line and only a line supporting rail is provided for the spare line.” When the Examiner attempts to discuss the claimed spare line (see claim 37), the Examiner relies on Fig. 10 of **Johnson** (see Office Action dated April 14, 2006, pages 3-4). However, Fig. 10 of **Johnson** does not show the features as set forth in claim 37.

In view of the above, Applicants respectfully submit that this rejection of claims 1-4 and 37 should be withdrawn. Furthermore, it is submitted that this rejection of claims 35, 37-42, and 44-48 should be withdrawn by virtue of their dependency.

C. The Examiner has rejected claims 36 and 43 under 35 USC 103(a) as obvious over **Johnson** in view of **Itoh** and USP 6,231,260 (**Markulec**).

Applicants respectfully traverse this rejection, for the following reasons.

As set forth in the Office Action, on page 3, at lines 3-4, this rejection relies on **Johnson**, **Itoh**, and **Markulec**.

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However, as discussed in the Office Action, on page 3, at lines 7-10, this rejection appears to rely on a fourth art reference: **Vu et al.** The Examiner states the following: "It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a downward tapered groove and nut in the system of **Vu et al.** as modified, in view of the readily apparent equivalence between the two tracks" (Office Action, page 3, lines 7-10).

This rejection is improper because it is confusing and unclear. It is not clear which art the Examiner is truly relying upon in this rejection. When a rejection is unclear in this manner, it is improper. Thus, this rejection is improper and should be withdrawn.

In view of the aforementioned remarks, the claims currently being considered are in condition for examination.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the Applicants' undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due now or in the future with respect to this application, to Deposit Account No. 01-2340.

Respectfully submitted,
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